IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC and JILL MEADOWS, M.D., Petitioners, v. KIM REYNOLDS ex rel. STATE OF IOWA, and IOWA BOARD OF MEDICINE, Respondents.	No. EQCE 83074 **MOTION TO DISSOLVE PERMANENT INJUNCTION ISSUED JANUARY 22, 2019** **ORAL ARGUMENT REQUESTED**

Respondents, Kim Reynolds ex rel. State of Iowa and Iowa Board of Medicine, through counsel, respectfully move this Court for an order dissolving the permanent injunction issued by it on January 22, 2019, because there has been a substantial change in the law, as explained in Respondents' accompanying brief in support of this motion to dissolve.

WHEREFORE, Respondents pray the Court will issue an order dissolving its January 22, 2019 injunction.

Respectfully submitted this 11th day of August, 2022.

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PLANNED PARENTHOOD OF THE HEARTLAND, INC., EMMA GOLDMAN CLINIC and JILL MEADOWS, M.D., Petitioners, v. KIM REYNOLDS ex rel. STATE OF IOWA, and IOWA BOARD OF MEDICINE, Respondents.	No. EQCE 83074 **BRIEF IN SUPPORT OF RESPONDENTS' MOTION TO DISSOLVE PERMANENT INJUNCTION ISSUED JANUARY 22, 2019** **ORAL ARGUMENT REQUESTED**

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INTRODUCTION

In 2019, this Court—compelled by then-existing Iowa and U.S. Supreme Court precedent—permanently enjoined Iowa's fetal heartbeat law, which was enacted to protect innocent, unborn life by prohibiting elective abortions after the detection of a fetal heartbeat. Iowa Code § 146C.2. The law contains exceptions for medical emergencies—including threats to the mother's life and "serious risk of substantial and irreversible impairment of a major bodily function," Iowa Code §§ 146C.2(2), 146C.1(3), 146A.1(6)(a), and for other rare circumstances—including rape, incest, and fetal abnormality, Iowa Code §§ 146C.2(2); 146C.1(4). The law allows treatment for incomplete miscarriages. Iowa Code § 146C.1(4)(c). And it only regulates physicians—it does not impose any liability on women who have an abortion. Iowa Code § 146C.2.

Because it was undisputed that the law prohibited some previability abortions, this Court in 2019 held that the law violated "the due process and equal protection provisions of the Iowa Constitution," Summ. J. Ruling at 8, as informed by the Iowa Supreme Court's "recent decision" in *Planned Parenthood of the Heartland v. Reynolds, ex rel. State*, 915 N.W.2d 206 (Iowa 2018) (*PPH II*), and the U.S. Supreme Court's decisions in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and *Roe v. Wade*, 410 U.S. 113 (1973).

In Iowa as in other jurisdictions, "[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Bear v. Iowa Dist. Ct. of Tama Cnty.*, 540 N.W.2d 439, 441 (Iowa 1995). Indeed, "[w]hen a change in the law authorizes what had previously been forbidden, it is an abuse of discretion for a court to refuse to modify an injunction founded on superseded law." *Toussaint v. McCarthy*, 801 F.2d 1080, 1090 (9th Cir. 1986) (quoting *Am. Horse Prot. Ass'n v. Watt*, 694 F.2d 1310, 1316 (D.C. Cir. 1982)). And this past June, the Iowa Supreme Court overruled *PPH II*, "reject[ing] the proposition that there is a fundamental right to an abortion in Iowa's Constitution subjecting abortion regulation to strict scrutiny." *Planned Parenthood of the Heartland, Inc. v. Reynolds ex rel. State*, 975 N.W.2d 710, 715 (Iowa 2022) (*PPH IV*), *reh'g denied* (July 5, 2022). One week later the U.S. Supreme Court overruled *Roe* and *Casey*, reasoning that the "viability line makes no sense," and *Casey*'s "undue burden" test was "arbitrary" and "unworkable." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2261, 2266, 2270, 2275 (2022).

As a result, the permanent injunction this Court previously issued is now "founded on superseded law." *Toussaint*, 801 F.2d at 1090 (quoting *Am. Horse*, 694 F.2d at 1316). And that change easily qualifies as "substantial." *Bear*, 540 N.W.2d at 441.

Following *PPH IV* and *Dobbs*, no right to an abortion exists under the state or federal constitution. Strict scrutiny is no longer the test. And the viability line is no more. This Court thus has a duty to vacate its injunction so Iowa can enforce its validly enacted law. Alternatively, if the Court believes further factual development is required, the Court should at least lift the injunction while that development occurs. *See Iowa State Dep't of Health v. Hertko*, 282 N.W.2d 744, 752 (Iowa 1979) (affirming denial of temporary injunction in case involving "disputed questions of law about which there was doubt"). Either way, a substantial change in the law warrants dissolution of the permanent injunction.

BACKGROUND

In the Spring of 2018, the Iowa General Assembly amended Iowa Code chapter 146C to require physicians to "perform an abdominal ultrasound" before an abortion "to determine if a fetal heartbeat is detectable." Iowa Code § 146C.2(1)(a). The law then prohibits "an abortion upon a pregnant woman when it has been determined that the unborn child has a detectable fetal heartbeat, unless, in the physician's reasonable medical judgment, a medical emergency exists, or when the abortion is medically necessary." Iowa Code § 146C.2(2)(a).

Less than two weeks after Governor Reynolds signed the bill into law, Petitioners filed a lawsuit in this Court challenging the law's constitutionality under the Iowa Constitution.

Then in June 2018, the Iowa Supreme Court issued its decision in *PPH II*, holding for the first time that a fundamental right to abortion exists under the Iowa Constitution, *PPH II*, 915 N.W.2d at 212, 237, 245–46, and that laws regulating abortion must satisfy strict scrutiny to survive, *id.* at 238.

This Court later entered summary judgment for Petitioners, declaring "Iowa Code chapter 146C . . . unconstitutional" under the Iowa Constitution and "permanently enjoin[ing]" Respondents "from implementing, effectuating or enforcing the provisions of Iowa Code chapter 146C." Summ. J. Ruling at 8.[1]

The Court reached that conclusion because, "[r]egardless of when precisely . . . a fetal heartbeat may be detected in a given pregnancy, it [was] undisputed that such cardiac activity is detectable well in advance of the fetus becoming viable." *Id.* at 3. And based on *PPH II*, *Roe*, and *Casey*, the Court thought that "viability [was] not only material to this case, it [was] dispositive." *Id.*

[1] Although the Court's order broadly declared "Iowa Code chapter 146C" unconstitutional, Petitioners read the Court's opinion and order as only enjoining Code § 146C.2, which is all the relief Petitioners had requested.

"In coming to this conclusion," the Court cited "the benefit of the recent decision" in *PPH II*. *Id.* In that case, "the Iowa Supreme Court held that a woman's right to decide whether to terminate a pregnancy is a fundamental right under the Iowa Constitution, and that any governmental limits on that right are to be analyzed using strict scrutiny." *Id.* at 3–4.

From *PPH II*, this Court moved on to *Roe* and *Casey*, noting first that the "application of a strict scrutiny test" in the abortion context had been "first taken up in *Roe v. Wade*." Summ. J. Ruling at 4. *Roe* had "focused on the viability of the fetus," declaring that for the state's "interest in potential life, the 'compelling' point [was] at viability." *Id.* (quoting *Roe*, 410 U.S. at 163). As a result, the state's interest in potential life "may only be used to regulate (even to the point of proscription) postviability abortions." *Id.*

That "threshold of viability as a check on the state's compelling state interest in promoting potential life" had thus far "remained intact." *Id.* at 5. While in *Casey*, the U.S. Supreme Court had "established an 'undue burden' standard" for "state restrictions on previability abortions," the *Casey* court had not "disturb[ed] the central holding of *Roe v. Wade* that a state may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Id.* (quoting *Casey*, 505 U.S. at 879) (cleaned up).

In *PPH II*, the Iowa Supreme Court had "expressly rejected the undue burden standard fashioned in *Casey* and [had] held that any legislative restrictions on a woman's fundamental right to decide to terminate a pregnancy should be measured solely by a strict scrutiny analysis." Summ. J. Ruling at 5. But *PPH II* did *not* "expressly address the previability versus postviability dichotomy from *Roe* and its progeny." *Id.* at 6. Despite that omission, this Court was "satisfied that such an analysis is inherent in the Iowa Supreme Court's adoption of a strict scrutiny test." *Id.* And the Court was "equally satisfied that Iowa Code chapter 146C fail[ed] in this regard as a prohibition of previability abortions." *Id.*

Next, this Court rejected Respondents' alternative argument "that Iowa Code chapter 146C does not impose a ban on abortions, but merely creates a window of opportunity" for women to exercise "their right to terminate a pregnancy." *Id.* at 7. That argument, the Court thought, was "an attempt to repackage the undue burden standard rejected by the Iowa Supreme Court in *PPH II*." *Id.* And as long as abortion remained a "fundamental right," the argument was foreclosed because it would have "relegate[d] the individual rights of Iowa women to something less than fundamental," *id.* (quoting *PPH II*, 915 N.W.2d at 240), by requiring "a level of diligence . . . antithetical to the notion of a fundamental right," *id.*

"In summary," this Court concluded it was "undisputed that the threshold for the restriction upon a woman's fundamental right to terminate a pregnancy (the detection of a fetal heartbeat) . . . constitutes a prohibition of previability abortions." Summ. J. Ruling at 7–8. "As such," the Court held that it violated "the due process and equal protection provisions of the Iowa Constitution" because it was not "narrowly tailored to serve the compelling state interest of promoting potential life." *Id.* at 8. "Accordingly," the Court granted Petitioners' motion for summary judgment, declared the law "unconstitutional and therefore void," and granted Petitioners' request for permanent injunctive relief. *Id.*

Respondents ultimately chose not to appeal that decision given that this Court had based its ruling on the Iowa Supreme Court's decision in *PPH II* and on the U.S. Supreme Court's earlier decisions in *Roe* and *Casey*—all three of which remained good law in 2019.

Those three cases have since been overruled. *PPH IV*, 975 N.W.2d at 715–16, 740; *Dobbs*, 142 S. Ct. at 2246–48, 2283. Accordingly, Respondents now move this Court to dissolve its permanent injunction given this substantial change in the governing law.

ARGUMENT

I. Now that *PPH II*, *Roe*, and *Casey* have been overruled, this Court should dissolve the injunction preventing enforcement of Iowa's fetal heartbeat law.

It has long been the law in Iowa that "[t]he court which rendered [an] injunction may modify or vacate the injunction if, over time, there has been a substantial change in the facts or law." *Bear*, 540 N.W.2d at 441 (citing *Helmkamp v. Clark Ready Mix Co.*, 249 N.W.2d 655, 656 (Iowa 1977); 42 Am.Jur.2d *Injunctions* §§ 317, 318, 334 (1969)).[2]

The federal courts have long applied the same rule. "A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need." *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932). A "court may recognize subsequent changes in either statutory or decisional law." *Agostini v. Felton*, 521 U.S. 203, 215 (1997). *Accord Ry. Lab. Execs.' Ass'n v. Metro-N. Commuter R.R. Co.*, 759 F. Supp. 1019, 1021 (S.D.N.Y. 1990) (collecting cases for the same proposition).

"The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion 'when it refuses to

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[2] That rule controls no matter whether the party subjected to the injunction chose to appeal. *See, e.g.*, *Jacobson v. Cnty. of Goodhue*, 539 N.W.2d 623, 625 (Minn. Ct. App. 1995).

modify an injunction . . . in light of such changes.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Agostini*, 521 U.S. at 215) (cleaned up). And especially where, as here, "a change in the law authorizes what had previously been forbidden, it is an abuse of discretion for a court to refuse to modify an injunction founded on superseded law." *Toussaint*, 801 F.2d at 1090 (quoting *Am. Horse*, 694 F.2d at 1316).[3]

That rule applies with even greater force in cases enjoining "the enforcement of statutes." *Wood Bros. Thresher Co. v. Eicher*, 1 N.W.2d 655, 659 (Iowa 1942). Courts "will not, except under extraordinary circumstances, interfere with the duties of other departments of the government." *Id.* (quoting 28 Am.Jur. § 181, p. 369). For that reason, "equity will not ordinarily interfere with the action of public officers taken under statutory authorization." *Id.* And the Iowa Supreme Court "has repeatedly held that equity will generally decline to interfere with the administration of valid laws against crimes or quasi crimes." *Id.*

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[3] *Accord, e.g.*, *Pasadena City Bd. of Educ. v. Spangler*, 427 U.S. 424, 437–38 (1976) (district court abused its discretion by failing to modify injunction after change in decisional law); *Cal. by & through Becerra v. U.S. Env't Prot. Agency*, 978 F.3d 708, 713–14 (9th Cir. 2020) (discussing the "unbroken line of Supreme Court cases [that] makes clear that it is an abuse of discretion to deny a modification of an injunction after the law underlying the order changes to permit what was previously forbidden").

A. After *PPH IV* and *Dobbs*, this Court's previous treatment of abortion as a fundamental right is founded on superseded law.

This Court unambiguously based its decision to issue a permanent injunction of Iowa's fetal heartbeat law on *PPH II*'s holding "that a woman's right to decide whether to terminate a pregnancy is a fundamental right under the Iowa Constitution." Summ. J. Ruling at 3. This Court also relied on *Roe*'s holding that a woman has a "fundamental right to decide to terminate a pregnancy" under the federal Constitution. *Id.* at 4. In fact, this Court described the nature of the right as "fundamental" ten separate times in its eight-page order, *id.* at 3, 4, 4 n.8, 5, 6, 7.

In *PPH IV*, though, the Iowa Supreme Court could find "no support," textually or historically, "for abortion as a fundamental constitutional right in Iowa." *PPH IV*, 975 N.W.2d at 740. Textually, "[i]f liberty cannot be limited *without* due process of law, the logical implication is that liberty can be limited *with* due process of law." *Id.* And historically, "abortion became a crime in our state on March 15, 1858—just six months after the effective date of the Iowa Constitution—and remained generally illegal until *Roe v. Wade* was decided over one hundred years later." *Id.* at 740. "[A]bortion at any stage of pregnancy [was] criminalized by statute in Iowa as early as 1843," refuting any argument that it could have been considered a fundamental right. *Id.* at 741.

In *Dobbs*, the U.S. Supreme Court confirmed that the same is true under the federal constitution. "[P]rocuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution's text or in our Nation's history." *Dobbs*, 142 S. Ct. at 2283. "The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including . . . the Due Process Clause of the Fourteenth Amendment." *Id.* at 2242. Indeed, "[u]ntil the latter part of the 20th century, such a right was entirely unknown in American law." *Id.*

Taken together, *PPH IV* and *Dobbs* explicitly overruled *PPH II*, *Roe*, and *Casey*, the foundation for this Court's previous opinion. They also explicitly and conclusively overruled the holdings in those cases that *any* provision in the state or federal Constitution protects abortion as a "fundamental right." *PPH IV*, 975 N.W.2d at 715–16, 740; *Dobbs*, 142 S. Ct. at 2246–48, 2283. Accordingly, this Court's permanent injunction against Iowa's fetal heartbeat law is "founded on superseded law." *Toussaint*, 801 F.2d at 1090 (quoting *Am. Horse*, 694 F.2d at 1316). And this Court should permanently dissolve it now to avoid any further interference with "the action of public officers taken under statutory authorization." *Wood Bros.*, 1 N.W.2d at 659 (quoting 28 Am.Jur. § 181, p. 369).

B. After *PPH IV* and *Dobbs*, this Court's application of strict scrutiny is founded on superseded law.

This Court just as clearly based its injunction on *PPH II*'s related holding that "any governmental limits on [the abortion] right are to be analyzed using strict scrutiny." Summ. J. Ruling at 3–4. And in applying that test, the Court likewise drew support from *Roe*'s own "application of a strict scrutiny test." *Id.* at 4. Because the Court concluded that Iowa's fetal heartbeat law fails strict scrutiny, meaning it is not "narrowly tailored to serve the compelling state interest of promoting potential life," the Court held that it violated "both the due process and equal protection provisions of the Iowa Constitution" and thus had to be permanently enjoined. *Id.* at 8.

In *PPH IV*, though, the Iowa Supreme Court "overrule[d] *PPH II*, and thus reject[ed] the proposition that there is a fundamental right to an abortion in Iowa's Constitution subjecting abortion regulation to strict scrutiny." *PPH IV*, 975 N.W.2d at 715. Iowa's Constitution no longer "necessitate[s] a strict scrutiny standard of review for regulations affecting [the abortion] right." *Id.* at 716. And as *Dobbs* made clear one week later, the federal Constitution does not require strict scrutiny either. *Dobbs*, 142 S. Ct. at 2283–84 (applying rational-basis review instead).

1. Because abortion is not a fundamental right, rational-basis review applies.

Despite rejecting strict scrutiny, the *PPH IV* court did not decide "what constitutional standard should replace" it. *PPH IV*, 975 N.W.2d at 715. But in justifying its decision to leave that question to "be litigated further" on remand and in other cases, the *PPH IV* court explained that the upcoming *Dobbs* decision "could alter the federal constitutional landscape established by *Roe* and *Casey*." *Id.* at 716. *Dobbs* "could decide whether the undue burden test continues to govern federal constitutional analysis of abortion rights." *Id.* at 745. And that decision could "impart a great deal of wisdom" that the *PPH IV* court did not yet have. *Id.*

And that is exactly what *Dobbs* did. *Dobbs* rejected *Casey*'s "ambiguous," "arbitrary," and "unworkable" undue-burden test. *Dobbs*, 142 S. Ct. at 2266, 2273, 2275. That test had been "plucked from nowhere." *Id.* at 2275 (cleaned up). And "[c]ontinued adherence to [the undue-burden test] would undermine, not advance, the evenhanded, predictable, and consistent development of legal principles." *Id.* at 2275 (cleaned up). So *Dobbs* discarded it, applying "rational-basis review" instead. *Id.* at 2283–84. "Under [U.S. Supreme Court] precedents, rational-basis review is the appropriate standard for such challenges" because "procuring an abortion is not a fundamental constitutional right." *Id.* at 2283.

"It follows that the States may regulate abortion for legitimate reasons, and when such regulations are challenged under the Constitution, courts cannot substitute their social and economic beliefs for the judgment of legislative bodies." *Dobbs*, 142 S. Ct. at 2283–84 (cleaned up). Under the federal Constitution, a "law regulating abortion, like other health and welfare laws, is entitled to a 'strong presumption of validity.'" *Id.* at 2284 (quoting *Heller v. Doe*, 509 U.S. 312, 319 (1993)). "It must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests." *Id.*

"These legitimate interests include[:]

- respect for and preservation of prenatal life at all stages of development;
- the protection of maternal health and safety;
- the elimination of particularly gruesome or barbaric medical procedures;
- the preservation of the integrity of the medical profession;
- the mitigation of fetal pain; and
- the prevention of discrimination on the basis of race, sex, or disability."

Id. These same interests—especially the state's interests in "protecting the life of the unborn," protecting women, prohibiting "a barbaric practice," and preserving the medical profession's

integrity—provided a rational basis for the 15-week law challenged in *Dobbs*. *Id.* And it followed that the constitutional challenge to that law "must fail." *Id.*

The same is true under Iowa law. "It is well settled that '[i]f a fundamental right is implicated," Iowa courts "apply strict scrutiny.'" *PPH II*, 915 N.W.2d at 238 (quoting *State v. Seering*, 701 N.W.2d 655, 662 (Iowa 2005)). And "[i]f a fundamental right is *not* implicated, a statute need only survive a rational basis analysis." *Seering*, 701 N.W.2d at 662 (emphasis added). Stated simply, "[i]f the right at issue is fundamental, strict scrutiny applies; otherwise, the state only has to satisfy the rational basis test." *King v. State*, 818 N.W.2d 1, 31 (Iowa 2012).

To reiterate what the Iowa Supreme Court held in *PPH IV*, "the Iowa Constitution is not the source of a fundamental right to an abortion." 975 N.W.2d at 716. As a matter of state constitutional text and history, "there is no support for abortion as a fundamental constitutional right." *Id.* at 740. It necessarily follows that, since "a fundamental right is not implicated," laws like Iowa's fetal heartbeat law "need only survive a rational basis analysis." *Seering*, 701 N.W.2d at 662. Or as the Iowa Supreme Court put it in *King*, because the alleged "right at issue" is not fundamental, "the state only has to satisfy the rational basis test." *King*, 818 N.W.2d at 31.

Importantly, that's true notwithstanding the *PPH IV* court's statement that—for purposes of resolving that case on remand—"the *Casey* undue burden test" the Iowa Supreme Court "applied in *PPH I* remain[ed] the governing standard." 975 N.W.2d at 716.

To begin, the *PPH IV* court made clear that "the legal standard may also be litigated further" on remand. *Id.* And it makes no sense to hold Iowa to any standard higher than rational basis when no fundamental right is at stake. After all, the U.S. Supreme Court created (and the Iowa Supreme Court applied) the undue-burden standard for abortion regulations only *after* its (incorrect) holding that there was a constitutional right to take the life of an unborn child. Now that both courts have correctly held that no such right exists, it would be incongruous to subject Iowa laws to the same undue-burden standard.

Moreover, whatever standard applies for other governmental regulations, it would be wrong to impose any type of heightened burden when the state's interest is in protecting innocent, unborn life. Unlike the "exercise of the rights at issue" in other contexts that do "not destroy a 'potential life,'" an abortion "has that effect." *Dobbs*, 142 S. Ct. at 2261 (quoting *Roe*, 410 U.S. at 154). And even in *Casey*, the U.S. Supreme Court recognized that changes the analysis when the interest the State advances is protecting unborn life. *Casey*, 505 U.S. at 878.

Go all the way back to *PPH I*, in which the Iowa Supreme Court struck down an Iowa Board of Medicine rule "establishing standards of practice for physicians who prescribe or administer abortion-inducing drugs." *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 253 (Iowa 2015) (*PPH I*). To support that conclusion, the *PPH I* court observed that the U.S. Supreme Court had "applie[d] the undue burden test differently depending on the state's interest advanced by a statute or regulation." *Id.* at 263.

"If the state's interest is to advance fetal life, '[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.'" *Id.* (quoting *Casey*, 505 U.S. at 878). "On the other hand, if the state's interest is to further the health or interest of a woman seeking to terminate her pregnancy, '[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right.'" *Id.* at 263–64 (quoting *Casey*, 505 U.S. at 878).

Because the Board did not pass the rule at issue in *PPH I* to "advance the state's interest in advancing fetal life," the *PPH I* court applied the second version of *Casey*'s undue-burden test, which required the court to "weigh the extent of the burden

against the strength of the state's justification" for the restriction. *Id.* at 264–65 (quoting *Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 914 (9th Cir. 2014)). Because the rule merely placed restrictions on abortion to further the state's interest in maternal health and was not a prohibition designed to protect unborn life, the first version of *Casey*'s undue-burden test did not apply. *Id.*

Accordingly, while "the *Casey* undue burden test" that was actually "applied in *PPH I* remain[ed] the governing standard" on remand in *PPH IV* for reviewing the abortion *restriction* there, *PPH IV*, 975 N.W.2d at 716, that version of *Casey*'s test is not and cannot be the test for a *prohibition* on abortion that "advance[s] the state's interest in advancing fetal life," *PPH I*, 865 N.W.2d at 264. The Iowa Supreme Court has never said what level of review applies for laws that prohibit elective abortions after a certain point in pregnancy like Iowa's fetal heartbeat law. Thus, because "the right at issue is [not] fundamental," the law "only has to satisfy the rational basis test." *King*, 818 N.W.2d at 31.

2. Iowa's fetal heartbeat law rationally advances the state's interest in protecting unborn life.

"Under rational-basis review, the statute need only be rationally related to a legitimate state interest." *Sanchez v. State*, 692 N.W.2d 812, 817–18 (Iowa 2005). *Accord Dobbs*, 142 S. Ct. at 2284. And that review only requires "a reasonable fit between the

government interest and the means utilized to advance that interest." *Seering*, 701 N.W.2d at 662 (cleaned up). *Accord Reno v. Flores*, 507 U.S. 292, 305 (1993) (same under federal law).

The reasonable fit here is obvious. Iowa's fetal heartbeat law rationally advances the state's interest in "respect for and preservation of prenatal life at all stages of development." *Dobbs*, 142 S. Ct. at 2284. As the Eleventh Circuit recently held in vacating a permanent injunction against Georgia's fetal heartbeat law, a "prohibition on abortions after detectable human heartbeat is rational" because "'[r]espect for and preservation of prenatal life at all stages of development' is a legitimate interest." *SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga.*, No. 20-13024, 2022 WL 2824904, at *4 (11th Cir. July 20, 2022) (quoting *Dobbs*, 142 S. Ct. at 2284).[4] And just like for Georgia's fetal heartbeat law, that "legitimate interest" provides a rational basis for and justifies Iowa's fetal heartbeat law, too. *Id.*

Indeed, in *SisterSong* even "the abortionists concede[d] that *Dobbs* doom[ed] their challenge to the Act's prohibition of abortions after detectable fetal heartbeat." *Id.* at *3. "Because [their] right-to-abortion claim" and the resulting permanent

[4] *Accord* Order, *Planned Parenthood South Atlantic v. Wilson*, No. 21-1369 (4th Cir. July 21, 2022) (vacating preliminary injunction of South Carolina's fetal heartbeat law post-*Dobbs*).

injunction had been "premised on the *Roe*/*Casey* framework, *Dobbs* [was] dispositive." Suppl. Appellees' Br., *SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga.*, No. 20-13024 (11th Cir. July 15, 2022), 2022 WL 2901027, at *1.

This Court's permanent injunction against Iowa's fetal heartbeat law was similarly premised on the *Roe*/*Casey* framework. Summ. J. Ruling at 4–6. So, taken together, *Dobbs* and *PPH IV* are equally dispositive of Petitioners' claim here.

What's more, by prohibiting elective abortion after detection of a fetal heartbeat, Iowa's law also rationally furthers state interests in prohibiting a barbaric practice, protecting women's health and safety, and preserving the medical profession's integrity. *Dobbs*, 142 S. Ct. at 2284. Measured against any of these interests, the law is constitutional.

C. After *PPH IV* and *Dobbs*, this Court's reliance on the viability line is founded on superseded law.

Finally, this Court based its decision to issue a permanent injunction against Iowa's fetal heartbeat law on the fact that the law prohibits some previability abortions. "[V]iability is not only material to this case," the Court wrote in its summary judgment order, "it is dispositive on the present record." Summ. J. Ruling at 3. Indeed, the Court's eight-page order contains 21 references to some version of the word. *Id.* at 3, 3 n.7, 4, 5, 6, 6 n.10, 8.

As the Court itself acknowledged, "*PPH II* did not expressly address the previability versus postviability dichotomy from *Roe* and its progeny." Summ. J. Ruling at 6. But the Court was still "satisfied that such an analysis [was] inherent in the Iowa Supreme Court's adoption of a strict scrutiny test." *Id.* And the Court was "equally satisfied that Iowa Code chapter 146C fail[ed] in this regard as a prohibition of previability abortions." *Id.*

In *PPH IV*, though, the Iowa Supreme Court overruled *PPH II*'s adoption of strict scrutiny. *PPH IV*, 975 N.W.2d at 715–716. Thus, it can no longer be true that the viability line has any "inherent" value under Iowa law. Summ. J. Ruling at 6. Moreover, in *Dobbs* the U.S. Supreme Court *erased* the viability line "from *Roe* and its progeny," *id.*, by overruling those cases, *Dobbs*, 142 S. Ct. at 2242, 2279. *Dobbs* even singled out the viability line for express disapproval, saying it "makes no sense" and had never been "adequately justified." *Dobbs*, 142 S. Ct. at 2261, 2270.

Against this backdrop, the viability line can no longer be read into *PPH II*'s strict-scrutiny analysis when both viability and strict scrutiny no longer control. And the fact that Iowa's fetal heartbeat law prohibits some previability abortions is no longer a reason to enjoin it. The injunction is now "founded on superseded law." *Toussaint*, 801 F.2d at 1090 (quoting *Am. Horse*, 694 F.2d at 1316). And the Court should dissolve it immediately.

II. In the alternative, the Court should at least dissolve the injunction pending further factual development.

To be clear, this Court can and should dissolve the injunction permanently right now because no additional factual development is needed to establish that there has been a "substantial change" in the law, *Bear*, 540 N.W.2d at 441, and the Court's injunction is now "founded on superseded law," *Toussaint*, 801 F.2d at 1090 (quoting *Am. Horse*, 694 F.2d at 1316). After *PPH IV* and *Dobbs*, laws regulating abortion are subject to rational-basis review, and Iowa's fetal heartbeat law easily passes that test. *SisterSong*, 2022 WL 2824904, at *4.

At a bare minimum, if the Court takes the extraordinary step of ordering further factual development when all that is required is a rational basis, the Court still should dissolve the injunction temporarily while that occurs. In those circumstances, the injunction would effectively be serving as a temporary injunction. And the Iowa Supreme Court has made clear that a temporary "injunction will not issue where the right of the complainant, which it is designed to protect, depends upon a disputed question of law about which there may be doubt, which has not been settled by the * * * law of this state." *Hertko*, 282 N.W.2d at 751 (quoting *Kent Products v. Hoeph*, 61 N.W.2d 711, 714–15 (Iowa 1953)).

That's because a temporary injunction "is to a great extent a preventive remedy." *Beidenkopf v. Des Moines Life Ins. Co.*, 142 N.W. 434, 437 (Iowa 1913). So in cases "where the parties are in dispute concerning their legal rights," a temporary injunction "will not ordinarily be granted until the right is established, especially if the legal or equitable claims asserted raise questions of a doubtful or unsettled character." *Id.*

In *Hertko*, the Iowa Supreme Court held the district court had properly denied a request for a temporary injunction because the case "involved a disputed question of law as well as a disputed question of ultimate fact." 282 N.W.2d at 751. "The question of law to be resolved was the meaning" of a specific code section. *Id.* And the "question of ultimate fact involved the application" of that code section, "once defined, to the facts of [the] case." *Id.*

If the Court disagrees with Respondents' position that no additional facts are required because rational basis applies, this case still would "involve[] a disputed question of law," namely what standard applies to laws regulating abortion, "as well as a disputed question of ultimate fact," namely the application of that standard, "once defined, to the facts of [the] case." *Id.* So even under those circumstances it would be "proper for [this Court] in its discretion" to dissolve the injunction temporarily until the Court rules on the motion to dissolve it permanently. *Id.* at 752.

CONCLUSION

The Iowa Supreme Court's decision in *PPH IV* and the United States Supreme Court's decision in *Dobbs* mean that this Court's January 22, 2019 permanent injunction is founded on superseded law. Accordingly, this Court should dissolve and dismiss that injunction immediately. At a bare minimum, the Court should dissolve the injunction temporarily while the parties litigate the motion to dissolve it permanently.

Respectfully submitted this 11th day of August, 2022.

s/ Alan R. Ostergren
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